IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1710 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILALRATILAL - Applicant(s)

Versus

MRSSARLABENWIFEOFARUNCHANDRARATIALALBISKITWALA & 1 - Respondent(s)

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Appearance :

MR D DHIRAJLAL VYAS for Applicant(s) : 1,
None for Respondent(s) : 1,
MR HL JANI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 05/10/2005

ORAL JUDGMENT

1.The petitioner/original accused has filed this petition under Section 482 read with Section 439 of the Criminal Procedure Code praying for quashing and setting aside the

order passed by the learned Judicial Magistrate, First Class on 08.05.90 whereby the learned Magistrate has not granted B summary and issued direction for registration of the case and issuance of process for an offence under Section 354 of the Indian Penal Code.

2.This court has issued the rule and granted interim stay against further proceedings pursuant to the order passed by the learned Magistrate on 08.05.90.

3.It is the case of the petitioner that the petitioner was running a business of bakery namely Liberty Bakery having three branches in the city of Valsad. In 1984, because of the dispute, there was separation of the business. The petitioner was doing business in one shop right from the very beginning and his two sons namely Arun and Shashi tried to forcibly dispossess the petitioner. The petitioner, therefore, filed civil suit no.16/82 in the Civil court, Valsad for an injunction against his two sons. It is further stated that the petitioner's son namely, Shashi filed a civil suit bearing civil suit no. 2/84 for partition of the joint hindu family property including the shop which was in possession of the petitioner. This suit was filed against the petitioner and two other brothers and since

legal proceedings were taken and there was no threat of forcible dispossession of property, the suit filed by the petitioner was withdrawn. In the suit filed by Shashi he applied for the appointment of Receiver which was not granted against which Misc. Civil Appeal no. 2/86 was filed and stated to have been pending before the District Judge, Valsad.

4.It is further stated that because of the serious allegations made against the petitioner by Arun, Criminal Case no. 5929/84 was filed by the petitioner. By an order of April 30, 1990, the Judicial Magistrate, First Class, Valsad convicted said Arun for an offence under Section 500 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment of one year and to pay a fine of Rs. 1000/- in the court and in default, an imprisonment of three months . It is further stated that the said Arun has filed Criminal Appeal no. 25/90 in the Sessions Court at Valsad which is said to have been pending. On 05.06.87 the petitioner had filed an FIR no. 98/87 against Arun. As a counter-blast Arun got an FIR filed in the name of his wife Sarla on 06.06.87 wherein after investigation, the police filed B summary. However, the Judicial Magistrate, First Class, Valsad by

an order dated 08.05.90 did not grant the B summary and directed the registration of case and issuance of summons under Section 354 of the Indian Penal Code against the petitioner.

5.It is this order of the learned Magistrate which is challenged in the present petition.

6.It is contended on behalf of the petitioner that the learned Magistrate has committed a serious error in not granting the B summary to the prosecution with a permission to file a procedure against the complainant. It is further stated that the according to the police papers, it is clearly a case of abuse of the process of court and a false complaint has been filed in view of the previous litigations between the parties. It is further stated that the police papers did not make out even a prima facie case for an offence under Section 354 of the Indian Penal Code. It is further stated that the learned Magistrate ought to have issued a notice to the petitioner when it was a case of granting or not granting the B summary with a prosecution against the complainant. The petitioner ought to have been given an opportunity of hearing which has not been given and hence the order is

vitiated. It is therefore contended that the order passed by the learned Magistrate is required to be quashed and set aside.

7.After having gone through the police report asking for B summary and after having gone through the order passed by the learned Magistrate and after considering the grounds raised in the present petition the court is of the view that before passing the impugned order, the learned Magistrate ought to have issued notice to the present petitioner/ original accused and he should not have straight away rejected the police report asking for B summary and should not have issued the direction for registration of case for an offence under Section 354 of the Criminal Procedure Code and issuance of process therein. The court is, therefore, of the view that the said order is in violation of the principles of natural justice. The present petitioner/original accused is required to be heard before passing the impugned order. The order is, therefore, required to be quashed and set aside on this ground only and the learned Magistrate is hereby directed to give an opportunity to the present petitioner/original accused so far as the police report asking for B summary is concerned and thereafter he may

pass an appropriate order in accordance with law.

8.In the above view of the matter, this petition is accordingly allowed to the above extent. Rule made absolute without any order as to cost.

(K.A. PUJ, J.)

Divya//